IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

WP(C).No. 11176 of 2007(E)

PETITIONER:

T.P.RAMLA, W/O.LATE K.P.MAMMOO,
MADATHIPARAMBIL HOUSE, KALOOR, KOCHI-17.

BY ADV. SRI.SIBY MATHEW
SMT.P.A.REZIYA

RESPONDENTS:

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1. CORPORATION OF KOCHI,
REP. BY ITS SECRETARY.

2. HEALTH INSPECTOR, KALOOR CIRCLE,
CORPORATION OF KOCHI.

3. C.J. BENEDICT @ BENNY, S/O. LATE C.T. JOHN, RESIDING AT CHAMMANIKODATH HOUSE, KALOOR, ERNAKULAM.

4. GEORGE, S/O. JOHN, RESIDING AT CHAMMANIKODATH HOUSE, KALOOR, ERNAKULAM.

R1 & R2 BY ADV. SRI.K.ANAND, SC, COCHIN CORPN.
R3 & R4 BY ADV. SRI.S.SREEKUMAR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 28/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K. M. JOSEPH, J.

W.P.C. NO. 11176 OF 2007 E

Dated this the 28th September, 2007

JUDGMENT

Petitioner has approached this Court seeking the following reliefs:

> *"(i) Issue a writ of mandamus or any other appropriate writ, order or direction commanding the 2nd respondent to consider the application for renewal and to take an independent decision uninfluenced by anyone and to renew the licence issued to the petitioner for conducting Hotel & C Class;*
>
> *(ii) Dispose of Exts.P2 and P3 applications in accordance with law;*
>
> *(iii) Issue a writ of certiorari and quash Ext.R3 (c) Minutes of the first respondent;*
>
> *(iv) Issue a writ of prohibition prohibiting the first respondent from taking any action in furtherance of Ext.R3(c) till Ext.R3(c) and any consequential*

order passed by the first respondent is served on the petitioner and an opportunity is given to the petitioner to prefer an Appeal against the same."

2. Case of the petitioner, in brief, is as follows:

Petitioner is a widow and a tenant of a room of Kochi Corporation. She is conducting a Hotel & C Class in the said premises from 1972 onwards. She has got licence from the first respondent upto 31.3.2007. When she approached the second respondent with an application for renewal, it was refused and the petitioner was informed that the licence will not be renewed. It is learnt that the refusal is due to the influence exerted by the landlord through the local politicians, it is alleged. It is stated that she had approached this Court earlier and filed a Writ Petition as W.P.(C). No.17579/05, when the licence was cancelled without any notice to her and without hearing and this Court directed the petitioner to file Appeal and the petitioner filed Ext.P2 Appeal. It is pointed out that the plaint in Ext.P2 was dismissed. Ext.P3 is the petition for granting licence. Ext.P4 series are photographs.

3. Respondents 3 and 4 have filed Counter Affidavit producing various documents. According to them, Ext.R3(a) notice under Section 411 of the Kerala Municipality Act was issued on 20.1.2005. It is submitted that there is a Report of the Building Inspector. He also points out that Ext.R3(b) is a Judgment of this Court in the Writ Petition filed by petitioner relegating the petitioner to file Appeal against the order passed under Section 411 of the Act. Ext.R3(c) purports to be the Minutes and produced to show that the Appeal of the petitioner was rejected. Counsel for petitioner says that the order has not yet been communicated. Ext.R3(e) is the Commission Report in the Suit filed by third respondent. In short, the case of the third respondent is that the building is indeed in a dilapidated condition and in fact, a portion of it has fallen down. A Reply Affidavit is filed.

4. Counsel for petitioner would submit that the portion where the restaurant is functioning can at any rate continue to function and it is intact. Shri K. Anand, learned counsel

appearing for the respondent Corporation points out that it is correct that notice was issued to the petitioner, but it was returned unserved. Petitioner also submits that she was not issued with notice of hearing before Ext.R3(c) decision was taken. It is also pointed out that the order pursuant to Ext.R3(c) is not served on the petitioner. Petitioner relies on Section 525 of the Act to contend that notice has not been served on the petitioner in the Appeal filed by her as contemplated in the Act. I would think that in the interest of justice, a decision can be ordered to be taken on the Appeal. In the light of the fact that the notice was returned unserved on the petitioner, I feel that Ext.P2 Appeal filed by petitioner be reconsidered with after affording an opportunity of hearing to the petitioner and respondent 3 & 4. Accordingly, the Writ Petition is disposed of as follows:

The decision No.10 in Ext.R3(c) in relation to Ext.P2 Appeal is quashed. In order to facilitate an early disposal of the Appeal, there will be a direction that the Appeal as Ext.P2 filed by petitioner shall be disposed of in accordance with law, after

affording an opportunity of hearing to the petitioner and respondents 3 and 4. It is further directed that service of notice on the parties need be effected only by effecting service on the counsel appearing for the petitioner and respondents 3 and 4 in this Writ Petition. A decision will be taken on the Appeal within a period of one month from the date of hearing of the parties as aforesaid and communicated to the petitioner and also respondents 3 and 4.

K. M. JOSEPH, JUDGE

kbk.